

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that the occupants of the agency position at Glendale, Los Angeles Division, be paid commission on received business under that certain agreement dated San Francisco, Calif., January 1, 1939 relating to the payment of commissions for the handling of milk, cream and related commodities."

EMPLOYES' STATEMENT OF FACTS: "EXHIBITS 'A' to 'H' inclusive are attached to and made a part of this brief.

"The Agency position at Glendale has been a joint agency with the Railway Express Agency since on or about February 1st, 1933. Any and all business of the Railway Express Agency offered the joint agent at Glendale since that time for shipment has been handled.

"An agreement is in effect between the parties to this dispute as relates to rules and working conditions dated September 1st, 1927, as to rates of pay dated May 1st, 1927, revised July 1st, 1930 and August 1st, 1937. As pertains to this particular dispute, there exists an agreement dated January 1st, 1939."

POSITION OF EMPLOYES: "This claim is filed and prosecuted under the agreement dated January 1st, 1939 mentioned in the Statement of Facts, Article VIII, Preamble and Section 1, which we quote:

'ARTICLE VIII

'Covenants and Conditions

"In compliance with and in discharge of the obligations imposed on the parties to this Agreement, by Award No. 313, Docket TE-202 of the National Railroad Adjustment Board, Third Division, hereinbefore referred to in the Preamble of this Agreement, it is agreed that:

"Sec. 1. Agents and agent-telegraphers, who come within the scope of the Agreement referred to in the Preamble of this Agreement, and who were joint agents for the Company and the Railway Express Agency, Incorporated, on June 16, 1934, or who may have become such joint agents subsequent to June 16, 1934, shall be paid commissions for handling milk, cream and related commodities designated in Article I, in accordance with the provisions of Articles I to VIII inclusive of this Agreement, and during the time they served as such joint agents, beginning with June 16, 1934, and ending with

and forwarded shipments of milk, cream and related commodities, in accordance with provisions of Sections 2 and 3 of Article VIII, for the following reasons:

"(1) The fact that agent was a joint agent for the Carrier and the Railway Express Agency on date Agreement was executed insofar as forwarded shipments were concerned, entitled him to commissions under Section 2, Article VIII.

"(2) While agent was not a joint agent for the Carrier and the Railway Express Agency on date Agreement was executed, with respect to received shipments, it was also necessary to pay him commissions on such shipments from January 1, 1939, under Section 3, Article VIII.

CONCLUSION

"Inasmuch as we have clearly and conclusively shown that no rule of the Agreement of January 1, 1939, between the Carrier and The Order of Railroad Telegraphers, has not in any manner been violated, but to the contrary, has been strictly adhered to by the Carrier in allowing appropriate commissions, both prior and subsequent to the date of the agreement, the Carrier requests that the claim of the Petitioner be denied."

OPINION OF BOARD: Prior to June, 1930, shipments of milk, cream and related commodities were handled as express traffic and agents of the carrier, who were also joint agents of the Railway Express Agency, Inc. were allowed express commissions by the Railway Express Agency. Effective June, 1930, the Railway Express Agency was relieved of the handling of this milk, cream and related commodities traffic, and the carrier took over the exclusive handling of such commodities for its own account, but declined to continue the payment of commissions to the agents for the handling of this business. Claim was thereupon filed with the carrier by The Order of Railroad Telegraphers on behalf of employees within the scope of the Telegraphers' Agreement concerning the payment of such commissions and this dispute was finally submitted to the Third Division of the Adjustment Board, later resulting in Award 313, in which the Board remanded the case to the parties for further handling on the property with a view of reaching an agreement and failing in this, with the right to return the case to the Adjustment Board. Following the issuance of Award 313, the parties reached an agreement covering the payment of commissions for the handling of milk, cream and related commodities by this carrier, which agreement is here identified as an agreement dated January 1, 1939, and signed for the Company by R. E. Beach, Assistant to General Manager, Southern Pacific Company (P. L.) and for the employees by H. J. Short, Acting General Chairman, The Order of Railroad Telegraphers.

The instant dispute grew out of the application of this agreement in the matter of retroactive compensation due the joint Railway and Express agent at Glendale, California, carrier contending that under the agreement agent at Glendale was entitled only to retroactive payment of commissions on shipments of milk, cream and related commodities forwarded from that station, while committee contends that he is entitled to retroactive payment of commissions on all such shipments forwarded and received at that station.

It is the position of the Committee that in the absence of any declaration within the agreement setting up a differentiation as to received and forwarded business, the agreement applies equally forceful even though only one way shipments were handled; that the position of the carrier is incorrect; that there can be found no essential differences in the wording of Sections 1, 2, and 3 of Article VIII to warrant or justify the failure of the Carrier to pay the Agent at Glendale commissions on all business handled whether forwarded or received.

It is the position of the carrier that:

"The claim is entirely without merit in that the Petitioner is asking that the agent be allowed commissions on received shipments of

milk, cream and related commodities which he did not handle nor was he a joint agent for the Carrier and the Railway Express Agency in this respect, as provided in Article VIII, Section 1.

"Furthermore, had the Railway Express Agency continued after June, 1930 to handle shipments of milk, cream and related commodities as express business, the agent would not have received commissions from the Railway Express Agency on any received shipments, as hereinbefore stated; all such shipments having been handled entirely by Railway Express Agency employees."

It is shown that effective June, 1930, the Railway Express Agency was relieved of the handling of this milk, cream and related commodities traffic, and the Carrier took over the exclusive handling for its own account, and that accordingly, the agent at Glendale has since been handling both forwarded and received shipments of this milk, cream and related commodities traffic upon which, although he continues to be joint agent for this carrier and the Railway Express Agency, he had not been receiving any commission for the handling of this milk, cream, and related commodities traffic until by the agreement between the parties dated January 1, 1939, it was agreed to pay such agents compensation for the handling of such milk, cream and related commodities traffic and while it is shown that on and after January 1, 1939, this carrier has been paying commissions to the agent at Glendale for the handling of such traffic on both forwarded and received shipments, it has declined, however, to pay retroactive compensation to this agent covering shipments received from June 16, 1934 to January 1, 1939, under the retroactive provisions of that agreement on the basis that prior to June, 1930, when such traffic was handled by the Railway Express Agency that received traffic for that agency was handled by an uptown office of the Railway Express Agency and not by the Railroad agent at Glendale.

It being shown that the agent at Glendale, California has been handling both forwarded and received shipments of this milk, cream and related commodities traffic since June, 1930, has been joint agent for the Railway Express Agency since May 31, 1934, and there being no declaration within the agreement of January 1, 1939 setting up a differentiation as to such received and forwarded business, it is clear that the Agreement applies to all such business handled whether forwarded or received, and, accordingly, the agent at Glendale is entitled to the payment of commissions on received business for the handling of milk, cream and related commodities shipments at his station, retroactive to June 16, 1934, the effective date of that agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Agent, Glendale, is entitled to be paid retroactive commissions on received business as claimed under the agreement between the parties dated January 1, 1939.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of May, 1941.